

NO. 25120

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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JAMES DOUGLAS KEAUFUO ING, ROBERT KALANI UICHI KIHUNE, CONSTANCE  
HEE LAU, DIANE JOYCE PLOTTS, and CHARLES NAINOA THOMPSON, in  
their capacities as Trustees of Kamehameha Schools Bishop Estate,  
Plaintiffs-Appellants, Cross-Appellants

vs.

MARGARET WEST EVANSON aka Margaret West Mahoney, JAMES FERGUSON  
SMALL, JAMES RADFORD SMALL, SARAH KAREN YORE, DENNIS WEST MAHONEY  
and FREDERICK WILLIAM MAHONEY, JR., Co-Trustees under that  
certain Revocable Trust of Margaret West Mahoney dated August 17,  
1978, and FREDERICK WILLIAM MAHONEY, JR., and DENNIS WEST  
MAHONEY, Co-Trustees under that certain Irrevocable Trust of  
Margaret West Mahoney dated December 29, 1982, Defendants-  
Appellees, Cross-Appellants

and

JOHN DOES 1-50; JANE DOES 1-50, DOE PARTNERSHIPS 1-50, DOE  
CORPORATIONS 1-50, DOE ENTITIES 1-50, and DOE GOVERNMENTAL UNITS  
1-50, Defendants

and

JAMES RADFORD SMALL; FREDERICK WILLIAM MAHONEY, JR., DENNIS WEST  
MAHONEY; and SARAH KAREN YORE, Co-Trustees under that certain  
Irrevocable Trust of Margaret West Mahoney dated December 29,  
1982, Counterclaimants-Appellees, Cross-Appellants

vs..

JAMES DOUGLAS KEAUFUO ING, ROBERT KALANI UICHI KIHUNE, CONSTANCE  
HEE LAU, DIANE JOYCE PLOTTS, and CHARLES NAINOA THOMPSON, in  
their capacities as Trustees of Kamehameha Schools Bishop Estate,  
Counterclaim Defendants-Appellants, Cross-Appellees

and

DEFENDANTS JOHN DOES 1-10, DOE PARTNERSHIPS 1-10, DOE  
CORPORATIONS 1-10 and DOE GOVERNMENTAL ENTITIES 1-10,  
Counterclaim Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-3758)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal and cross-appeal in this case. As a general rule, HRS § 641-1(a) (1993) authorizes appeals only from "final judgments, orders, or decrees[.]" "Final order means an order ending the proceedings, leaving nothing further to be accomplished." Familian Northwest, Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 370, 714 P.2d 936, 937 (1986) (citation and internal quotation marks omitted). None of the appealed orders ended the proceedings.

"We have, in rare situations, considered an interlocutory order so effectively 'final' that we have exercised appellate jurisdiction over an appeal that is neither a final judgment nor has been allowed by the circuit court under HRS § 641-1(b)." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321, 966 P.2d 631, 633 (1998). "Appellate jurisdiction in these cases is exercised under the collateral order doctrine." Id. "In order to fall within the narrow ambit of the collateral order doctrine, the order must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." Id. at 322, 966 P.2d at 634 (citations and internal quotation marks omitted; brackets in original). Based on the collateral order doctrine, "an order denying an application made in accord with HRS § 658-5 for a stay of proceedings until arbitration has been had and one denying an application filed pursuant to HRS § 658-3 for an order directing that arbitration proceed in the manner provided in a written agreement are appealable orders within the contemplation of HRS § 641-1(a)." Association of Owners of Kukui Plaza v. Swinerton & Walburg Co., 68 Haw. 98, 107, 705 P.2d 28,

35 (1985). However, "where the court denies a motion to compel arbitration and instead directs that the parties engage in a trial to determine whether an arbitration agreement exists, such denial is not appealable because the anticipated trial would not determine the merits of the action." Koolau Radiology, Inc. v. Queens's Medical Center, 73 Haw. 433, 444, 834 P.2d 1294, 1300 (1992). The April 26, 2002 order effectively denied Plaintiffs/Counterclaim Defendants/Appellants/ Cross-Appellees James Douglas Keauhou Ing, Robert Kalani Uichi Kihune, Constance Hee Lau, Diane Joyce Plotts, and Charles Nainoa Thompson's motion to compel arbitration, and ruled that Defendants/Counterclaim Plaintiffs/Appellees/Cross-Appellants James Radford Small, Frederick William Mahoney, Jr., Dennis West Mahoney and Sarah Karen Yore are entitled to a jury trial to determine the issue whether a valid and enforceable arbitration agreement exists. As evidenced by the June 12, 2002 "Order Regarding Retention of Jurisdiction by Court in Light of Appeal," the circuit court will proceed with a trial to determine whether an arbitration agreement exists. Therefore, the April 26, 2002 order is not appealable under the collateral order doctrine. Furthermore, none of the other appealed orders are appealable under the collateral order doctrine. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 8, 2002.